Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 41 (S/B) of 2003

State of U.P. now State of Uttaranchal
though Commissioner,
Rural Development Department,
Uttaranchal, Dehradun and others …….. Petitioners

Versus

1. Jagdish Prasad Manori s/o Sri Devi Dutt,
   R/o village-Harbhajwala,
   P/o Mehuwala Mafi,
   District Dehradun

2. Public Service Tribunal, Dehradun, Uttaranchal

3. Sri S.D. Bhatt,
   Head Clerk,
   Officer of the District Development Officer,
   Dehradun. ……. Respondents

Corm: Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.
May 04, 2004

[Per Hon. P.C. Verma, J.]

This petition has been filed by the petitioner – State of Uttaranchal challenging the judgment and order 09.10.2002 passed by the Public Service Tribunal, Uttaranchal, by which the Tribunal quashed the order 02.02.1994 contained in Annexure 11 to the claim petition and directed the petitioner to restore respondent no. 1's original seniority and further if he is found eligible for promotion to the post of Head Clerk at any point of time before his superannuation, his matter be reopened and considered on merit and in case the promotion is granted to him, be accorded all the consequential service benefits including the retrial.

Respondents no. 1 Jagdish Prasad Manori was appointed as Typist-cim–clerk in district Chamoli on 23.12.1961 in pursuance of the appointment letters dated 11.12.1961 passed by the District Magistrate, Chamoli. He was required to report to the Block Development Officer, Narayanbagar. He was confirmed on 01.04.19973. The respondent no. 1

made an application on 09.10.1990 addressed to the Deputy Development Commissioner, Garhwal requesting him to transfer him in vacant post of Junior clerk in district Dehradun on the ground that his wife was ill and was living in Dehradun. A similar request was also made by Chandra Singh Rawat, who wanted his transfer from Dehradun. Accordingly, on 02.01.1981, Deputy Development Commissioner, Garhwal Division, Pauri passed order allowing inter se transfer of both the applicants, namely, Jgdish Prasad Manuri and Chandra Singh Rawat form Chamoli to Dehradun and Dehradun to Chamoli, respectively. Respondent no. 1 was put in seniority list at the bottom of the cadre, as it was one of the conditions of the transfer.

Uttar Pradesh krishi Utpadan Aur Gramya Vikas Vibhag Lipik Varg Sewa Niyamawali-1980 governed the service conditions of the respondent no. 1 as he was working in group 'C' post of clerical cadre. Sub-clause (a) of Regulation 3 defines the Appointing Authority. As per sub clause (a) of Regulation 3, Appointing Authority in respect of Head Clerk & Accountant, District Accountant and Stenographer is District Magistrate and in respect of other posts Additional District Magistrate (Development)/ District Development Officer. State Services are of three cadres viz. State Cadre, Regional Cadre and District Cadre. Accordingly, an employee can be transferred within district if he is working in District Cadre, within Regional if he is working in Regional Cadre and within Sate if he is working in the State cadre.

The Appointing Authority of the respondent no. 1 was District Magistrate. Respondent no. 1 was working in district cadre. Therefore, he could only be transferred within district. Circular Letters dated 21.10.1986, 21.7.1989 and 16.4.1990 clarify that as per Uttar Pradesh Krishi Utpadan Aur Gramya Vikas Vibhag Lipik Varg Sewa Niyamawali- 1980 the ministerial services within District are District cadre Services, and seniority cannot be counted in another District except in accordance with the provisions of the aforesaid Service Rules. Circular Letter No. C – 4101/Sth- 2/V-232/86 dated 21.10.1986 with regard to implementation of the Staffing Pattern makes it clear that as per Rule 21 of the Ministerial Cadre Services Regulation, 1980, seniority list in the district will be made

of the ministerial employees appointed in the district. Government Order-116/Stha-3/88-89 Lucknow dated 21.7.1989 provides that in case of mutual transfer on personal request the seniority will be counted from the date of joining in the transferred district. As per Letter dated 1970/Stha-2/50/Ni.Ka. Sa Mang/dated Lucknow April 16, 1990 in case an employees is transferred without his consent on administrative grounds, his seniority will remain intact in the transferred district, but in case an employee is transferred with consent his seniority will be counted form the date he assumes charges in the respective cadre in the transferred district.

From the above noted facts and documents available on record, we find that if an employee is transferred form one district to another the seniority would be counted form the date of his joining in another district. Government Order dated 21.7.1989 provides that in case of mutual transfer on personal request the seniority would be counted fro the date of joining in the transferred district. The respondent no. 1 joined as Junior Clerk in the office of District Development Officer, Dehradun on 27.1.1981. Therefore, his seniority in Dehradun could be counted from 27.1.1981 only as he opted for mutual transfer and transferred vide transfer order dated 2.1.1981. Thus, the seniority of the respondent no. 1 was rightly determined. We find that the Public Service Tribunal, Uttaranchal, fell into error in quashing the order dated 2.2.1994 whereby the seniority of the respondent no. 1 was decided. As such, the petition deserves to be allowed.

The petition is allowed and the judgment and order dated 09.10.2002 passed by the Public Service Tribunal, Uttaranchal is hereby quashed. The claim petition of the respondent no. 1 before the Public Service Tribunal stands dismissed. No order as to costs.

(P.C. Verma, A.C.J.)

(Rajesh Tandon, J.)

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